

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 629 Financial Assistance for Water and Wastewater Infrastructure
SPONSOR(S): Payne
TIED BILLS: IDEN./SIM. **BILLS:** SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	15 Y, 0 N	Gregory	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Department of Environmental Protection (DEP), administers the State Revolving Fund (SRF) to provide low-interest loans for investments in water and sanitation infrastructure (e.g., sewage treatment, stormwater management, and drinking water treatment infrastructure), as well as for the implementation of nonpoint source pollution control and estuary protection projects. The SRF receives its initial capital from federal grants and state contributions. The SRF then "revolves" through the repayment of principal and the payment of interest on outstanding loans. The DEP implements two SRF programs: the Clean Water State Revolving Fund created under the Clean Water Act that includes Small Community Wastewater Facility Grants, and the Drinking Water State Revolving Fund created under the Safe Drinking Water Act.

Recipients of the SRF financial assistance currently receive their funding on a cost reimbursement basis, after they have paid their subcontractor. To receive funding prior to paying their subcontractors, the SRF recipients must use the advanced funding procedures found in s. 216.181, F.S.

The bill allows recipients of financial assistance from the SRF programs to receive their disbursements based on invoiced cost rather than on a cost reimbursement basis. Thus, recipients of the SRF funding will not be required to first pay their subcontractors for the costs of their water and sanitation infrastructure projects and then wait for reimbursement from the state. The bill exempts recipients of financial assistance under the SRF programs from following the advanced payment procedures and allows them to receive funding prior to paying their subcontractors. The recipients of the SRF financial assistance must provide proof of payment of previously invoiced costs prior to disbursement of their next disbursement request.

The bill will likely have positive fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Environmental Protection (DEP), administers the State Revolving Fund (SRF) to provide low-interest loans for investments in water and sanitation infrastructure (e.g., sewage treatment, stormwater management, and drinking water treatment infrastructure), as well as for the implementation of nonpoint source pollution control and estuary protection projects.¹ The SRF receives its initial capital from federal grants and state contributions. The SRF then "revolves" through the repayment of principal and the payment of interest on outstanding loans.² The DEP implements two SRF programs: the Clean Water State Revolving Fund (CWSRF) created under the Clean Water Act³ that includes Small Community Wastewater Facility Grants (SCWFG) and the Drinking Water State Revolving Fund (DWSRF) created under the Safe Drinking Water Act.⁴

Clean Water State Revolving Fund Loan Program

The CWSRF program provides low-interest loans for planning, designing, and constructing water pollution control facilities. Under CWSRF, the DEP may provide financial assistance to local government agencies through authorized programs that include making grants and loans, providing loan guarantees, purchasing loan insurance or other credit enhancements, and buying or refinancing local debt.⁵ "Local governmental agencies" are any municipality, county, district, or authority, or any agency thereof, acting jointly in connection with a project having jurisdiction over collection, transmission, treatment, or disposal of sewage, industrial wastes, stormwater, or other wastes and includes a district or authority whose principal responsibility is to provide airport, industrial or research park, or port facilities to the public.⁶

Local government agencies may use this financial assistance to pay for:

- Land necessary for and integral to the treatment process and for the ultimate disposal of wastewater or stormwater;
- Construction and related procurement used to implement planned activities;
- Demolition and removal of existing structures;
- Contingency for project cost overruns;
- Technical services;
- Costs associated with interim financing;
- Capitalized interest;
- Purchase of a domestic wastewater facility;
- Technical services for soil and hydrogeological tests, geotechnical evaluations, sewer system evaluations, archaeological surveys, and value engineering services;
- Costs for planning and design;
- Project costs, excluding operational costs, to implement best management practices for agricultural nonpoint source water pollution control;
- Sewer system evaluation studies, technical services for generating a sewer system evaluation survey, inflow corrections including replacing clean out caps, installing seals and dishes for manholes, and the televising/cleaning of lines including point repairs as necessary;

¹ DEP, *State Revolving Fund*, <http://www.dep.state.fl.us/water/wff/index.htm> (last visited January 30, 2017).

² ss. 403.1835(9)(a) and 403.8532(14), F.S.

³ 33 U.S.C. § 1383; s. 403.1835, F.S.

⁴ 42 U.S.C. § 300j-12; s. 403.8532, F.S.

⁵ s. 403.1835(3), F.S.

⁶ s. 403.1835(2)(c), F.S.

- Inflow/infiltration rehabilitation loans, construction and related procurement used to implement the DEP approved planned activities for an inflow/infiltration rehabilitation project;
- Preparation and implementation of an asset management plan; and
- Constructed wetlands to be used for the treatment of domestic wastewater.⁷

The DEP must give priority to eligible projects according to the extent each project intends to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. The DEP must also take into consideration the relative costs of achieving environmental and public health benefits during the assignment of project priorities.⁸ Then, the DEP provides funding to the projects with the highest scores first until all projects are funded or the funding is exhausted.⁹ The DEP performs environmental and financial overview of each loan, including technical review, regular inspections, disbursement approvals, and auditing.¹⁰ This includes review of all information submitted prior to reimbursement, regular audits of recipients, and financial reporting requirements under Florida's Single Audit Act.¹¹

Small Community Wastewater Facility Grants

The SCWFG assists financially disadvantaged small communities with their needs for adequate sewer facilities with funds from the CWSRF.¹² The DEP must reserve 15 percent of the CWSRF funding each year to the SCWFG.¹³ A "financially disadvantaged small community" is a county, municipality, or special district that has a population of 10,000 or fewer, according to the latest decennial census, and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce.¹⁴ Only projects that have received funding under the CWSRF program may receive these grants.¹⁵

The DEP may provide grants for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.¹⁶ These are the same costs eligible for funding under the CWSRF program, excluding all costs for land.¹⁷ The DEP ranks each proposed project using the criteria for the CWSRF projects, criteria regarding negative population trends, and criteria for projects that replace components that have exceeded their maximum expected useful life.¹⁸ Then, the DEP provides funding to the projects with the highest scores first until all projects are funded or the funding is exhausted.¹⁹ The DEP must perform adequate overview of each grant, including technical review, regular inspections, disbursement approvals, and auditing.²⁰ This includes the review of all information submitted prior to reimbursement, regular audits of recipients, and financial reporting requirements under Florida's Single Audit Act.²¹

⁷ r. 62-503.300(2), F.A.C.

⁸ s. 403.1835(7), F.S.

⁹ r. 62-503.300(1)(f), F.A.C.

¹⁰ rr. 62-503.751 and 62-503.800, F.A.C.

¹¹ s. 215.97, F.S.

¹² s. 403.1838(2), F.S.

¹³ s. 403.1835(3)(c), F.S.

¹⁴ s. 403.1838(2), F.S.

¹⁵ r. 62-505.300(1)(c), F.A.C.

¹⁶ s. 403.1838(3)(a), F.S.

¹⁷ r. 62-505.350(1), F.A.C.

¹⁸ r. 62-505.300(2)(c), F.A.C.

¹⁹ r. 62-505.300(2)(d), F.A.C.

²⁰ s. 403.1838(3)(c), F.S.

²¹ s. 215.97, F.S.

Drinking Water State Revolving Fund

Under the DWSRF, the DEP may make loans, grants, and deposits to community water systems; for-profit, privately owned, or investor-owned water systems; nonprofit, transient, noncommunity water systems; and nonprofit, nontransient, noncommunity water systems (eligible entities) to assist in planning, designing, and constructing public water systems.²² The DEP may provide loan guarantees, purchase loan insurance, and refinance local debt through the issue of new loans for projects approved by the DEP.²³

Eligible entities may use this financial assistance to pay for:

- Land that will be acquired from a willing seller and is necessary for the location of the facilities to be funded;
- Public water system construction and related equipment procurement and land acquisition;
- Demolition and removal of existing structures;
- Contingency for unforeseen project costs;
- Technical services after bid opening;
- Loan repayment reserve;
- Interest accruing during construction on payments under binding agreements between a project sponsor and contractors, manufacturers, or suppliers;
- Unretired debt principal;
- Capitalized interest for the loan;
- Multiple purpose facilities;
- Allowances for administrative expenses and engineering work;
- Acquiring all or part of an existing public water system from a willing seller as part of a consolidation or regionalization project; and
- Capacity purchase in an existing public water system.²⁴

The DEP must give priority to eligible projects based on public health considerations, compliance with state and federal requirements relating to public drinking water systems, and affordability.²⁵ The DEP must also give special consideration for projects that provide for the development of alternative drinking water supply projects and management techniques in areas where existing source waters are limited or threatened by saltwater intrusion, excessive drawdowns, contamination, or other problems; provide for a dependable, sustainable supply of drinking water and that are not otherwise financially feasible; and contribute to the sustainability of regional water sources²⁶

The DEP performs environmental and financial overview of each loan, including technical review, regular inspections, disbursement approvals, and auditing.²⁷ This includes the review of all information submitted prior to reimbursement, regular audits of recipients, and financial reporting requirements under Florida's Single Audit Act.²⁸

Advanced Payment

Recipients of the SRF financial assistance currently receive their funding on a cost reimbursement basis, after they have paid their subcontractor. To receive funding prior to paying their subcontractors, the SRF recipients must use that advanced funding procedures found in s. 216.181, F.S.

²² s. 403.8532(3), F.S.

²³ Id.

²⁴ r. 62-552.300(2), F.S.

²⁵ s. 403.8532(9)(a), F.S.

²⁶ Id.; r. 62-552.655, F.A.C.

²⁷ s. 403.8532(12), F.S.; rr. 62-552.700 and 62-552.800, F.A.C.

²⁸ s. 215.97, F.S.

If approved by general law or in the general appropriation act, governmental entities and non-profit corporations may receive advances for program startup and contractual services.²⁹ This advance may not exceed the expected cash needs for three months. Thereafter, the state may only distribute funds on a cost reimbursement basis.³⁰ The Chief Financial Officer (CFO) may, after consultation with the legislative appropriations committees, advance funds beyond the three month limitation, if it is determined to be consistent with the intent of the approved operating budget.³¹ The CFO may approve advanced payment for goods and services; other than for maintenance agreements, software license agreements, and subscriptions; when advance payment will result in a savings to the state which is equal to or greater than the amount the state would earn by investing the funds and paying in arrears and the goods or services are essential to the operation of a state agency and are available only if advance payment is made.³²

The following state programs do not follow the advanced payment requirements:

- Under the Florida Minority Business Loan Mobilization Program, the state may disburse up to 10 percent of the contract in advance for goods and services and 5 percent for professional services,³³ and
- The Department of Children and Families may advance payments to sheriffs for child protective investigations without following the requirements of the advanced payment provision.³⁴

Effect of the Proposed Changes

The bill creates ss. 403.1835(12), 403.1838(4), and 403.8532(17), F.S., to allow recipients of financial assistance from the CWSRF, the SCWFG, and DWSRF programs to receive their disbursements based on invoiced costs rather than on a cost reimbursement basis. Thus, recipients of SRF funding will not be required to first pay their subcontractors for the costs of their water and sanitation infrastructure projects and then wait for cost reimbursement from the state. Also, the bill exempts recipients of financial assistance under the SRF programs from the requirements of the advanced payment procedures.

The recipients of the SRF financial assistance must provide proof of payment of invoiced cost prior to disbursement of their next disbursement request.

The DEP still must review all information submitted prior to the disbursement of funds, perform regular audits of recipients, and require financial reporting under Florida's Single Audit Act and its rules.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.1835, F.S., relating to water pollution control financial assistance.

Section 2. Amends s. 403.1838, F.S., relating to small community sewer construction assistance.

Section 3. Amends s. 403.8532, F.S., relating to the drinking water revolving loan fund.

Section 4. Provides an effect date of July 1, 2017.

²⁹ s. 216.181(16)(b), F.S.

³⁰ Id.

³¹ Id.

³² r. 69I-40.120(3)(b), F.S.

³³ ss. 288.706(3) and (4), F.S.

³⁴ s. 39.3065(3)(c), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill will likely have a positive fiscal impact on local governments who receive financial assistance from the SRF programs by allowing them to receive their funding prior to paying their subcontractors based on invoices rather on a cost reimbursement basis.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DEP has sufficient rulemaking authority to amend its state revolving fund rules to conform to changes made in the statutes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

